

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

**AMATO RESTAURANT, LLC d/b/a
J HENRY'S DRAUGHT HOUSE AND
KITCHEN**

Plaintiff,

VS.

**CONTINENTAL WESTERN
INSURANCE COMPANY AND RETHA
WELCH**

Defendants.

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**CIVIL ACTION NO.:** 4:19-cv-4647

**DEFENDANT CONTINENTAL WESTERN INSURANCE COMPANY'S  
NOTICE OF REMOVAL**

TO THE HONORABLE UNITED STATES DISTRICT COURT:

Defendant Continental Western Insurance Company (“Continental”), respectfully petitions this Court for removal of the above-entitled action to the United States District Court for the Southern District of Texas from the 333<sup>rd</sup> Judicial District Court of Harris County, Texas, and for its Notice of Removal states:

## I. REMOVAL JURISDICTION

1. This action, entitled Amato Restaurant, LLC d/b/a J Henry’s Draught House and Kitchen v. Continental Western Insurance Company and Retha Welch, pending in the 333<sup>rd</sup> Judicial District Court of Harris County, Texas, Cause No. 2019-77586, was commenced against Defendants via the filing of Plaintiff’s Original Petition (the “Petition”) on or about October 23, 2019. *See* Exhibit A, Index of Documents Filed In State Court, Attachment 4 at 1.

2. Defendant Continental was served on November 7, 2019. Defendant Retha Welch was served on November 9, 2019. Accordingly, this notice of removal is timely filed pursuant to 28 U.S.C. § 1446(b).

3. Plaintiff is a Texas limited liability company; as Plaintiff's member is a citizen of Texas, Plaintiff is a citizen of Texas. Continental is incorporated in Iowa and has its principal place of business in Iowa; therefore, Continental is a citizen of Iowa.

4. Plaintiff alleges causes of action against Continental for breach of contract, violations of the Texas Insurance Code, and breach of the duty of good faith and fair dealing. *See* Exhibit A, Attachment 4 at 6-8. Plaintiff seeks actual damages, treble damages, punitive and exemplary damages, plus attorney's fees. *Id.* at 13-14.

5. On May 9, 2019, in accordance with section 542A.006(a) of the Texas Insurance Code, Continental provided written notice that Continental accepted whatever liability Defendant Welch might have to Plaintiff for Welch's acts or omissions related to this claim. *See* Exhibit B (Continental's Letter to Plaintiff). Pursuant to Chapter 542A of the Texas Insurance Code, no cause of action exists against Welch for any claim-related damages she may have caused, and Texas law requires dismissal of this action against her with prejudice. *See* Tex. Ins. Code 542A.006(b) ("If an insurer makes an election under Subsection (a) before a claimant files an action to which this chapter applies, no cause of action exists against the agent related to the claimant's claim, and, if the claimant files an action against the agent, the court shall dismiss that action with prejudice.").

6. Accordingly, there is no possibility that Plaintiff might recover against non-diverse Defendant Welch on any of the pleaded causes of action against her. Therefore, this Court should disregard Welch's citizenship for purposes of the removal determination.

7. Accordingly, removal is proper because there is complete diversity between the parties under 28 U.S.C. § 1332.

**II.**  
**AMOUNT IN CONTROVERSY**

8. This is a civil action in which the amount in controversy exceeds the sum of \$75,000, exclusive of interest and costs. Plaintiff seeks damages “in excess of \$100,000.” Exhibit A, Attachment 4 at 2. Thus, it is apparent from Plaintiff’s Petition that the damages sought by Plaintiff are greater than \$75,000. Therefore, the amount in controversy requirement of 28 U.S.C. § 1332(a) is satisfied.

**III.**  
**ATTACHMENTS**

9. In accordance with 28 U.S.C. § 1446(a), copies of all process, pleadings, and orders served upon Continental in the state court action are attached to this notice. *See* Exhibit A. In accordance with Local Rule 81, a list of all counsel of record is attached to this notice as well. *See* Exhibit C.

**IV.**  
**NOTICE TO STATE COURT**

10. Pursuant to 28 U.S.C. § 1446(d), written notice of the filing of this notice of removal will promptly be given to all parties and to the clerk of the 333<sup>rd</sup> Judicial District Court of Harris County, Texas.

11. Pursuant to Federal Rule of Civil Procedure 38, Continental demands a trial by jury.

**V.  
PRAYER**

WHEREFORE, PREMISES CONSIDERED, Continental respectfully gives notice that this state court action has been removed and placed on this Court's docket for further proceedings. Continental further requests any additional relief which it may be justly entitled.

Respectfully submitted,

/s/Jennifer G. Martin

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**ATTORNEYS FOR DEFENDANT  
CONTINENTAL WESTERN INSURANCE  
COMPANY**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document has been forwarded to counsel of record in accordance with the Federal Rules of Civil Procedure, on this the 26th day of November, 2019.

/s/ Jennifer G. Martin

**JENNIFER G. MARTIN**